



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/655,208	09/04/2003	Grant W. Crider	crider11	7005

7590 08/20/2004

Kenneth M. Bush
Bush Intellectual Property Law Group, LLC
P.O. Box 381146
Birmingham, AL 35238

EXAMINER

LEV, BRUCE ALLEN

ART UNIT	PAPER NUMBER
----------	--------------

3634

DATE MAILED: 08/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/655,208

Applicant(s)

CRIDER ET AL.

Examiner

Bruce A. Lev

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1/16/04.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

BRUCE A. LEV
PRIMARY EXAMINER

DETAILED ACTION

Specification

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "**means**", in lines 2, 5, 8, and 13, and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "**the present invention**", in lines 1, 5, 7, and 10, etc.

Claim Objections

Claims 1-37 are objected to because the claims should start with "An apparatus" of "The apparatus", rather than "Apparatus".

Claim Rejections - 35 USC § 112

Claims 1-37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As concerns claims 1, 3, 12, 14, 23, 25, 26, 29, 32, and 35, there is an inconsistency between the language in the preamble and certain portions in the body of the claims, thereby making the scope of the claims unclear. For example, the preamble

Art Unit: 3634

clearly indicates that the subcombination of an "apparatus" is being claimed with the functional recitation of the "apparatus" being used "for opening and closing a portal". However, the body of the claim positively recites the "portal" (and the lateral margins thereof), e.g., "a pair of spaced apart opposing *lateral margins of said portal*" (claim 1, line 3), "*commensurate with* the separation of the lateral margins" (claim 1, lines 5-6), and "*fixedly attached* across the portal" (claim 1, line 6), which indicates the claims as being drawn to a combination of the "apparatus" and the "portal". Therefore, the applicant is required to clarify what the claims are intended to be drawn to, i.e., either the "apparatus" alone or in combination with the "portal", and to present the claims with the language which is consistent with the invention. The applicant should note that "*adapted to be*" language may be appropriate if claiming the "apparatus" alone (i.e., "*adapted to be secured to*").

As concerns claims 1, 26, 29, 32, and 35, the phrase "means" must be defined, i.e., "varying means".

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8, 11-13, and 26-28, and 32-34 are rejected under 35 U.S.C. 102(b) as being anticipated by ***Allen 5,383,510***.

Allen sets forth an apparatus comprising a flexible curtain 26 having first and second ends, the second end being folded back (wrapped around) to define a pocket; a rod 42 captured within the pocket; means for varying the height of the pocket; and means (inclusive of inclined cylindrical members 24) rotatably attached at each end of the rod for magnetically urging the pocket towards lateral margins of its portal.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Allen in view of Mozis et al 4,992,768.

Allen sets forth the apparatus, as advanced above, except for the pairs of cylindrical magnets including spacer members therebetween. However, ***Mozis et al teach*** forming pairs of cylindrical magnets including spacer members therebetween. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus of Allen by incorporating pairs of cylindrical magnets including spacer members therebetween, as taught by Mozis et al, in order to increase the strength of the connection between the curtain and its associated margins of a portal.

Claims 1-8 and 11-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over ***Crider et al 6,138,739 in view of Allen.***

Crider et al set forth an apparatus comprising a flexible curtain 18 having first and second ends, the second end being folded back (wrapped around) to define a pocket; a rod 34 captured within the pocket; a second rod (as disclosed therein and within the associated parent applications including 10/722,784 as Patent No. 5,785,105); means for varying the height of the pocket; and means rotatably attached at each end of the rod(s) for urging the pocket towards lateral margins of its portal. ***What Crider et al do not set forth*** is the means for urging the pocket towards lateral margins including magnetic means. However, ***Allen teaches*** the use of magnetic means for urging the pocket towards its lateral margins. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus of Crider et al by incorporating magnets means for urging the pocket towards its lateral margins, as taught by Allen, in order to more increase the surface area and strength of the connection between the curtain and the margins of a portal.

Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over ***Crider et al in view of Allen further in view of Mozis et al.***

Crider et al in view of Allen set forth the apparatus, as advanced above, except for the pairs of cylindrical magnets including spacer members therebetween. However, ***Mozis et al teach*** forming pairs of cylindrical magnets including spacer members therebetween. Therefore, it would have been obvious to one of ordinary skill

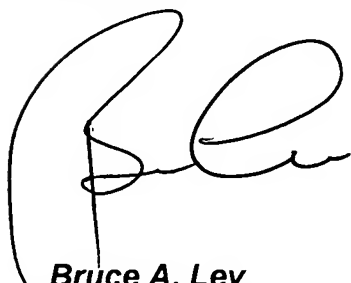
in the art at the time the invention was made to modify the apparatus of Crider et al in view of Allen by incorporating pairs of cylindrical magnets including spacer members therebetween, as taught by Mozis et al, in order to increase the strength of the connection between the curtain and its associated margins of a portal.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce A. Lev whose telephone number is (703) 308-7470.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-2168.

8/12/2004



Bruce A. Lev
Primary Examiner
Group 3600